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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 FELICIA TURNER,) Case No. ED CV 17-1343-PJW
11 Plaintiff,)
12 v.) MEMORANDUM OPINION AND ORDER
13 NANCY A. BERRYHILL,)
14 ACTING COMMISSIONER OF THE)
15 SOCIAL SECURITY ADMINISTRATION,)
16 Defendant.)
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18 I.

19 INTRODUCTION

20 Plaintiff appeals a decision by Defendant Social Security
21 Administration ("the Agency"), denying her applications for Disability
22 Insurance Benefits ("DIB") and Supplemental Security Income ("SSI").
23 She contends that the Administrative Law Judge ("ALJ") failed to
24 provide clear and convincing reasons for rejecting her testimony about
25 her carpal tunnel syndrome. For the reasons discussed below, the
26 ALJ's decision is affirmed.
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1 II.

2 SUMMARY OF PROCEEDINGS

3 In June 2013, Plaintiff applied for DIB and SSI, alleging that
4 she had been disabled since June 2012, due to "degenerative joint,
5 cervical spine disease." (Administrative Record ("AR") 166-76, 195.)
6 She later reported hair loss, weight gain, pain on the bottom of her
7 left heel, constant pain in her neck, and emotional stress. (AR 244,
8 260.) She claimed in addition that her "hands feel like electricity
9 going through them [and her] fingers stay numb." (AR 260.) Her
10 applications were denied initially and on reconsideration and she
11 requested and was granted a hearing before an ALJ. (AR 58-109, 125-
12 28.) Following a hearing in November 2015, the ALJ issued a decision,
13 finding that she was not disabled. (AR 11-22, 29-57.) Plaintiff
14 appealed to the Appeals Council, which denied review. (AR 1-7.) This
15 action followed.

16 III.

17 ANALYSIS

18 Plaintiff contends that the ALJ failed to provide adequate
19 reasons for rejecting her testimony that she is unable to do anything
20 that involves handling, fingering, feeling, pushing, or pulling,
21 testimony which, if believed, would preclude all work. (Joint Stip.
22 at 4-12.) For the following reasons, the Court concludes that the ALJ
23 did not err.

24 ALJs are tasked with judging a claimant's credibility. *Andrews*
25 *v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). In doing so, they can
26 rely on "ordinary techniques of credibility evaluation." *Ghanim v.*
27 *Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Smolen v. Chater*,
28 80 F.3d 1273, 1284 (9th Cir. 1996)). Where there is no evidence of

1 malingering, however, they can only reject a claimant's testimony for
2 specific, clear, and convincing reasons that are supported by
3 substantial evidence in the record. *Trevizo v. Berryhill*, 871 F.3d
4 664, 678 (9th Cir. 2017) (citing *Garrison v. Colvin*, 759 F.3d 995,
5 1014-15 (9th Cir. 2014)).¹

6 Plaintiff testified that she suffers from pain in her neck that
7 goes down her left arm and left side to her feet. (AR 41, 46.) She
8 complained that her right hand "cramps up" when she writes and she
9 gets tingling and numbness in her fingers. (AR 42, 44.) In a
10 Function Report, Plaintiff explained that she has pain on the "whole
11 left side" of her body and her "left hand cramps up [and] my index
12 finger stay[s] numb." (AR 223.) She reported that she does not have
13 the energy to do anything because of the pain. She also reported that
14 she takes care of her son and her mother, cooking and driving when
15 needed, with help from her daughter. (AR 224.) She explained that
16 she is able to clean and do laundry, but has a hard time holding her
17 27-pound grandchild. (AR 225, 228.)

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19 ¹ In March 2016, after the ALJ issued his decision in this case,
20 Social Security Ruling ("SSR") 16-3p went into effect. See SSR 16-3p,
21 2016 WL 1119029 (Mar. 16, 2016). SSR 16-3p supersedes SSR 96-7p, the
22 Agency's previous policy governing the evaluation of subjective
23 symptoms. *Id.* at *1. Under 16-3p, ALJs were directed not to "assess
24 an individual's overall character or truthfulness in the manner
25 typically used during an adversarial court litigation. The focus on
26 the evaluation of an individual's symptoms should not be to determine
27 whether he or she is a truthful person." *Id.* at *10. Instead, ALJs
28 "consider all of the evidence in an individual's record," "to
determine how symptoms limit ability to perform work-related
activities." *Id.* at *2. The Ninth Circuit has explained, however,
that this change is generally just stylistic and "does not alter the
pre-existing standards in the Ninth Circuit for evaluating a
claimant's symptom testimony." *Petersen v. Berryhill*, 2018 WL
3030775, at *1 n.1 (9th Cir. June 19, 2018) (citing *Trevizo*, 871 F.3d
at 678 n.5).

1 In a Pain Questionnaire, Plaintiff reported that her pain is
2 located in her "neck, shoulder leg/left side, hands." (AR 249.) She
3 noted that she uses hand braces for carpal tunnel in both hands. (AR
4 250.) She explained further that she can do some errands without
5 assistance, but she needs her daughter to go shopping with her to
6 carry groceries. (AR 251.)

7 Despite this testimony, the ALJ determined that Plaintiff could
8 engage in "frequent performance of manipulative activities" with both
9 hands. (AR 16.) In doing so, the ALJ discounted Plaintiff's
10 testimony because: (1) her daily activities were not consistent with
11 an inability to work; (2) the lack of aggressive treatment suggested
12 that her symptoms and limitations were not as severe as she alleged;
13 (3) any positive objective findings did not support more restrictive
14 functional limitations; and (4) no "reliable" medical report endorsed
15 the extent of Plaintiff's alleged limitations. (AR 17-18.)

16 Generally speaking, these are valid reasons for questioning a
17 claimant's testimony. See *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.
18 2007) (holding ALJ can consider claimant's ability to perform daily
19 activities in assessing credibility); *Meanel v. Apfel*, 172 F.3d 1111,
20 1114 (9th Cir. 1999) (holding inconsistency between allegations of
21 severe pain and conservative treatment was proper basis for
22 discounting credibility); *Rollins v. Massanari*, 261 F.3d 853, 857 (9th
23 Cir. 2001) (noting ALJ can consider objective medical evidence in
24 determining credibility of claimant). Further, though the ALJ's
25 conclusion that Plaintiff's daily activities undermine her testimony
26 is not supported by substantial evidence, the rest of his reasons are.

27 The ALJ questioned Plaintiff's claim of extreme limitations due
28 to her carpal tunnel syndrome in light of her ability to watch

1 television, take medication, drive, shop for groceries (with her
2 daughter's help), clean, and do laundry. (AR 17.) The Court does not
3 agree that these limited activities are inconsistent with her claimed
4 inability to work. Watching television and taking medication are
5 activities that would seem to involve very little use of the arms and
6 hands. As for grocery shopping (with help), cleaning, and doing
7 laundry, it is not clear from the record whether Plaintiff performed
8 these chores all day long or whether she did so sporadically during
9 the day or the week. As such, this is not a valid reason to discount
10 Plaintiff's testimony.²

11 The ALJ's finding that Plaintiff did not receive aggressive
12 treatment for carpal tunnel syndrome is supported by the record. (AR
13 17.) None of her doctors, including an orthopedic specialist she saw,
14 recommended surgery for her carpal tunnel and she did not seek surgery
15 for it on her own. It was reasonable, therefore, for the ALJ to
16 conclude that if Plaintiff's carpal tunnel was so debilitating that it
17 prevented her from lifting and writing that she would have sought out
18 and received more aggressive treatment.

19 Plaintiff disagrees with this analysis. She points out that she
20 took Norco and Vicodin for pain. But it appears from the records that
21 she was prescribed these medications for her neck and back pain, not
22 her carpal tunnel pain. (AR 310-12, 314, 316-17, 386.) Thus, the ALJ
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24 ² The Agency argues that Plaintiff's ability to perform daily
25 activities shows that she must be exaggerating when she claims that
26 she cannot use her hands. (Joint Stip. at 20.) But the ALJ did not
27 rely on this argument when analyzing her credibility and, as such, the
28 Court is not at liberty to do so here. See *Pinto v. Massanari*, 249
F.3d 840, 847 (9th Cir. 2001) ("[W]e cannot affirm the decision of an
agency on a ground that the agency did not invoke in making its
decision.") (citation omitted).

1 did not err in concluding that the lack of aggressive treatment
2 undermined her claims of pain.

3 The ALJ also found that the objective evidence did not support
4 more restrictive functional limitations, given the record evidence
5 pertaining to carpal tunnel syndrome. (AR 18.) This finding is also
6 supported by the record.

7 The evidence regarding carpal tunnel was limited and showed only
8 a nerve conduction study revealing findings consistent with mild
9 carpal tunnel syndrome in August 2013 and tenderness to palpation of
10 both wrists in March 2015. (AR 18, 293, 361.) The majority of the
11 treatment records, however, do not even list carpal tunnel in the
12 diagnosis or treatment plan sections. (AR 371-72, 376, 380, 383,
13 388.)

14 Plaintiff argues that the ALJ failed to consider the positive
15 Tinel's test at the consultative examination in February 2014. (Joint
16 Stip. at 10.) Although the ALJ did not mention it when discussing the
17 carpal tunnel evidence, he did mention it in the next paragraph when
18 discussing the consultative examiner's objective findings. (AR 18.)
19 He noted that, despite the positive Tinel's test, the consultative
20 examiner concluded that Plaintiff was capable of frequent manipulative
21 activities with both hands. (AR 18, 330, 332.) The examination also
22 revealed no significant deformities, no tenderness, well-preserved
23 fine and gross manipulations, negative Phalen's, no thenar muscle
24 atrophy, intact range of motion of all digits, full abduction and
25 adduction of the thumbs, ability to make a complete fist, and equal
26 grip strength on both hands. (AR 330.) The ALJ was free to consider
27 these records in evaluating Plaintiff's credibility. His finding that
28 they did not support her claims is supported by the record.

1 Finally, the ALJ discounted Plaintiff's credibility because he
2 found "no reliable medical source statement from any physician
3 endorsing the extent of [Plaintiff's] alleged functional limitations."
4 (AR 17.) This justification is also supported by substantial
5 evidence.

6 Plaintiff's treating physician, Dr. Symonett, is the only doctor
7 to have opined that Plaintiff's carpal tunnel syndrome severely
8 limited her ability to function. He found that she was unable to
9 reach overhead, handle, finger, feel, push, or pull with her right
10 hand. (AR 354-59.) The ALJ discounted Dr. Symonett's opinion because
11 he found that these limitations were not consistent with the doctor's
12 objective findings. (AR 18-19.) Plaintiff has not challenged the
13 ALJ's rejection of this opinion. Absent Dr. Symonett's opinion, there
14 is no medical opinion that supports Plaintiff's claim of disabling
15 pain.

16 In the end, all but one of the reasons cited by the ALJ are
17 supported by the record. And these remaining reasons are sufficient
18 to uphold the ALJ's finding on credibility. See *Carmickle v. Comm'r,*
19 *Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008) (holding
20 error is harmless if substantial evidence remains to support the ALJ's
21 credibility finding).

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1 IV.

2 CONCLUSION

3 For the reasons set forth above, the Agency's decision that
4 Plaintiff is not disabled is affirmed and the case is dismissed with
5 prejudice.

6 IT IS SO ORDERED.

7 DATED: September 7, 2018

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PATRICK J. WALSH
10 UNITED STATES MAGISTRATE JUDGE
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